

To: Wagner, Robert (DEQ)[WAGNERR1@michigan.gov]
Cc: Victorine, Gary[victorine.gary@epa.gov]
From: Kamke, Sherry
Sent: Mon 3/9/2015 5:19:06 PM
Subject: RE: MDEQ MI Senate Bill 791

Hi Bob!

I think it would be good for you to reach out to Margaret Guerriero regarding next steps. I think she may be out of the office later this week so you might want to send a message within a day or two. I will likely be involved in coordinating folks on our side so please copy me on anything that you send to her.

Thanks,

Sherry

Sherry A. Kamke

Underground Storage Tank Section Chief

RCRA Branch

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kamke.sherry@epa.gov

From: Wagner, Robert (DEQ) [mailto:WAGNERR1@michigan.gov]
Sent: Thursday, March 05, 2015 12:11 PM
To: Kamke, Sherry
Subject: RE: MDEQ MI Senate Bill 791

Hi Sherry,

I appreciate the offer to discuss next steps. We would like to set up a call to do so. Would you like us to make the arrangements or would you prefer to?

Bob

Robert Wagner, Chief

Remediation and Redevelopment Division

Michigan Department of Environmental Quality

OFFICE PHONE NUMBER: 517-284-5166

wagnerr1@michigan.gov

From: Kamke, Sherry [mailto:Kamke.Sherry@epa.gov]
Sent: Wednesday, March 04, 2015 11:36 AM
To: Wagner, Robert (DEQ)
Subject: FW: MDEQ MI Senate Bill 791
Importance: High

Bob,

I'm not sure who at DEQ would be the most appropriate contact for me to reach on this so I am starting with you. I just wanted to follow-up with you to see if you received the message from Margaret Guerriero regarding the MI state fund.

Should we set up a call to discuss next steps?

Sherry

Sherry A. Kamke

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From: Guerriero, Margaret

Sent: Tuesday, February 17, 2015 2:32 PM

To: WAGNERR1@michigan.gov

Cc: Victorine, Gary; Kamke, Sherry; Harris, Michael; Gray, Margaret

Subject: FW: MDEQ MI Senate Bill 791

Hi Bob,

Thank you for your January 16, 2015 email, requesting EPA certification regarding Michigan's Underground Storage Tank Cleanup Fund statute, and submitting supporting information.

It has been a long time since a state has come in for state fund approval so we had to do some research to see what was done when the majority of states initiated the process back in the late 1980's and early 1990's. This is what we have found from those earlier submittals:

- 1) The process was an iterative one starting with the review of available information followed by an exchange of questions and answers to get to the point of a decision
- 2) The application packages included more than just the state statutes. Most states had applications that included statutes, regulations, procedures, guidance, forms, and summary information about the finances and other key features about how the fund would work. Many state funds were operating awhile before applications were submitted. Note: We now have an ongoing evaluation of the state's fund called state fund soundness where we review a number of financial parameters about the funds relative to the universe of fund eligible leaking underground storage tanks in the state. Before the applications were formally submitted for approval, many of the working details were discussed and vetted with regional staff so that the final package could move more smoothly.
- 3) The Regions used the attached State Fund Review Guidance to evaluate the applications sent in by the state.
- 4) The final determination of the funds use as financial responsibility is made by EPA's Regional Administrator. Thus, when ready the formal application should be submitted to the Regional Administrator.

We will use the attached guidance to review the suitability of the state fund as a financial responsibility mechanism for owners and operators in Michigan. In addition to what is stated in the guidance, it would be helpful to include certain information that's part of the annual state fund soundness evaluation. Although all the details may not be known at this time, it would be good to start with an estimate of anticipated annual income and annual claims. I am also attaching information that was submitted to EPA from Michigan DEQ in 1990. Although it is not the complete application since that application does not exist in one document, it does give a sense of what types of information were part of the previous package from MI.

We'd be happy to have additional discussions about the particulars of the fund so that we can expedite approval. We understand how important this is.

Please let me know if you have any questions. You can contact me at 312-886-0399. Your staff can contact Gary Victorine at 312-886-1479 or Sherry Kamke at 312-353-5794.

Margaret

From: Wagner, Robert (DEQ) [<mailto:WAGNERR1@michigan.gov>]

Sent: Friday, January 16, 2015 1:41 PM

To: Kamke, Sherry

Cc: Kenney, Thomas; Siler, Sandy; Foskett, William; Erickson, Susan (DEQ); Reisner, Bob (DEQ); Eagle, Dennis (DEQ); Shirey, Kathleen (DEQ); McClellan, Michael (DEQ); Sygo, Jim (DEQ)

Subject: RE: MI Senate Bill 791

Hi Sherry,

The Governor signed Senate Bill 791, now known as Public Act 416 of 2014, which amends Part 215 of Public Act 451 and creates the Underground Storage Tank Cleanup Fund (Fund). We are seeking EPA certification of the Fund as to its meeting of the federal UST financial responsibility requirements for owners and operators. To assist you in the review and the determination, I have also attached a cross reference to compare Part 215 and Part 213, Leaking Underground Storage Tank Act and the definitions of "refined petroleum". We would appreciate your review of Part 215 as it relates to these requirements. In order to begin implementation of the new program, it is essential that we receive a timely review and look forward to receiving your comments and/or questions.

With respect an owner/operator that is unable to cover the required deductible and thus

would be ineligible to access the Fund, please be assured that funds in the amount of \$20 million annually are appropriated from the Refined Petroleum Fund to the MDEQ to perform corrective actions. MDEQ performs 200-300 site investigations and conducts corrective action to address releases at 200-250 LUST sites annually where the owner/operator is not able to so. MDEQ utilizes a risk based approach to direct funding to perform corrective action the sites that pose the greatest risk to the public health and environment.

Thank you in advance for your assistance and consideration of this request.

Bob

Robert Wagner, Chief

Remediation and Redevelopment Division

Michigan Department of Environmental Quality

OFFICE PHONE NUMBER: 517-284-5166

wagnerr1@michigan.gov

From: Kamke, Sherry [<mailto:Kamke.Sherry@epa.gov>]

Sent: Monday, September 22, 2014 9:20 AM

To: Wagner, Robert (DEQ)

Cc: Kenney, Thomas; Siler, Sandy; Foscett, William

Subject: MI Senate Bill 791

Importance: High

Bob,

Thanks for sending us the draft of the Michigan Senate Bill 791 and the two page summary of its elements. Thanks also for meeting with us by phone on September 16th to discuss our reaction to it.

In summary, our review revealed no apparent show stoppers or “red flag” issues. We did not identify any areas that would prevent us from issuing a letter of acceptability. There are a few provisions that are in the draft legislation that may cause us to qualify our acceptance. Tom Kenney mentioned that this type of qualification has been done before and is not out of the norm. Basically, our acceptability determination would only extend as far as the fund provides coverage. Qualifications depend on the specifics of each state package.

There are some areas that you may want to focus on as your agency develops your package.

- 1) It looks like the state removed some of the substantive definitions from Part 215 and cross-referenced the parallel provision in the Part 213 LUST provisions. It would ease the review process if the cross referenced Sections were included with the final review package. We will need to see them prior to making our final determination on the acceptability of this mechanism.
- 2) The state may need to provide more information to show that the definition of “Refined Petroleum” is consistent with the federal definition.
- 3) The state will need to provide additional supporting information to provide assurance that if the owner/operate is unable to pay the deductible, or in other situations like "acts of god" that the state will step in to cover that amount as suggested on page 2 of the Bill Summary. This is to ensure “first dollar” coverage exists under this program. .

Our acceptability determination will only extend to the coverage provided. So the letter, once issued, may reference the areas not covered by the state fund including the following:

- 1) Releases prior to the effective date of the bill are not covered.
- 2) Public utilities are not covered so we would have to qualify our acceptability determination to indicate that it doesn’t extend to ineligible entities. Sec. 21510(4), page 20.
- 3) Sec. 21510C(G), page 24, had an act of war type exclusion from coverage.

Finally, the legislation covers releases from aboveground piping and dispensers which is more broad than the federal requirements. We may need assurance that claims related to those releases aren't going to cause solvency issues related to releases the federal regulations were intended to cover. Sec. 21510(2), page 19.

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